United States Senate
WASHINGTON, DC 20510

January 2, 2013

The Honorable Ben S. Bernanke
Chairman
Board of Governors, Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Thomas J. Curry
Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

The Honorable Martin Gruenberg
Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW
Washington, DC 20006

Dear Chairman Bernanke, Comptroller Curry, and Chairman Gruenberg:

We write to urge you to take immediate steps to stop the financial institutions that your agencies supervise from engaging in payday lending – an unsafe and unsound practice – before it becomes an even larger problem in the states we represent.

Your agencies have a long history of appropriately prohibiting their supervisee banks from partnering with non-bank payday lenders to facilitate evasion of state laws restricting payday loans.[1] But several of your largest supervisees are currently making payday loans directly to their own customers.

We applaud the FDIC for its recent statement that the agency is "deeply concerned" about payday lending by banks, is investigating, and is considering further steps.[2]

We also applaud the OCC's recent statements before the House of Representatives. The agency noted that payday lending is "unsafe and unsound and unfair to consumers" and that the profitability of payday loans "is dependent on effectively trapping consumers in a cycle of repeat credit transactions, high fees, and unsustainable debt."[3] The agency further noted the importance of the protections that the Military Lending Act provides members of the military and their dependents by "restricting the cost and terms of . . . abusive credit products."[4]

The banks call these loans deposit "advance" loans, but they are structured just like loans from payday loan storefronts, carrying a high cost (averaging 365% in annualized interest)[5] combined with a short-term balloon repayment (averaging just 10 days).[6] Indeed, in their own advisory letters addressing payday lending, the OCC and FDIC both note that "payday loans" are "also known as 'deferred deposit advances.'"[7]

For customers with direct deposit of wages or public benefits, the banks will advance the pay in increments for a fee, ranging from $7.50 to $10 per $100 borrowed. The bank deposits the loan amount directly into the customer's account and then repays itself the loan amount, plus the fee, directly from the customer's next incoming direct deposit. If direct deposits are not sufficient to repay the loan within 35 days, the bank repays itself anyway, even if the repayment leads to the consumer's account being overdrawn, triggering more costs through overdraft fees.

Like non-bank payday borrowers, bank payday borrowers routinely find themselves unable to repay the loan in full while meeting their expenses the next month without taking out another payday loan. *On average, bank payday borrowers are stuck in this debt cycle for 175 days per year. The typical borrower takes out 16 bank payday loans within twelve months, with many borrowers taking out 20 or even 30 or more loans within one year.*[8]

The OCC's June 2011 proposed guidance addressing bank payday lending identifies safety and soundness concerns with these loans, noting operational, reputational, compliance, and credit risks. It expresses concern about the cycle of debt the product generates. But the proposed guidance, as applied, would not effect a change in the fundamental structure of the product that creates the cycle of debt: high-cost combined with short-term balloon repayment. Rather, signals from the financial industry indicate banks would view this guidance as a green light to proceed with widespread payday lending.[9] We urge the OCC to withdraw this proposed guidance.

The OCC has now acknowledged that payday loans are unsafe and unsound. The data now show these "advance" loans are not only structured like payday loans, but they also create the same cycle of debt. The FDIC's concern with payday lending has long been clear,[10] and the Board has also long highlighted safety and soundness concerns associated with high cost lending that leads to frequent renewals.[11] Indeed, bank payday loans increase the ranks of the unbanked by making checking accounts unsafe for vulnerable consumers,[12] a result clearly inconsistent with a safe and sound banking system. And payday lending poses serious reputational risks to any financial institution engaging in it.

As the agencies responsible for the safety and soundness of the financial institutions you supervise, you are compelled to stop them from making payday loans and to prevent additional banks from beginning to do so. We urge you to take meaningful regulatory action that ensures that no bank, regardless of its prudential regulator, structures loans in a way that traps its customers in a cycle of high cost debt. Our states' residents, and consumers everywhere, deserve better from our nation's financial institutions.

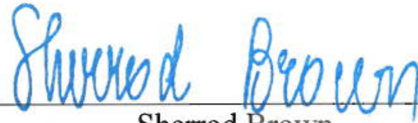
We appreciate your consideration of our concerns and would be happy to discuss them further.

Sincerely,

Richard Blumenthal
United States Senate

Richard J. Durbin
United States Senate

Charles E. Schumer
United States Senate



Sherrod Brown
United States Senate

Tom Udall
United States Senate

cc: The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1800 G Street NW
Washington, DC 20522

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[1] OCC Advisory Letter on Payday Lending, AL 2000-10 (Nov. 27, 2000); FDIC Financial Institution Letters, Guidelines for Payday Lending, FIL 14-2005, February 2005; In the early 2000s, the Board stopped the First Bank of Delaware from renting its charter to storefront payday lenders. *See* consumer complaint about the bank's payday activities at Consumer Federation of America, et al, *Consumer and Community Groups Call on Federal Reserve Board to Halt Rent-A-Bank Payday Lending By Delaware Bank*, April 15, 2003, *at* http://www.consumerfed.org/financial-services/166.

[2] Carter Dougherty, *FDIC to look at payday lending by banks*, Star Tribune, June 1, 2012, *available at* http://www.startribune.com/business/156520475.html?refer=y.

[3] Testimony of Grovetta Gardineer, Deputy Comptroller for Compliance Policy, Office of the Comptroller of the Currency, Before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, U.S. House of Representatives, July 24, 2012, at 1, 5.

[4] *Id.* at 5.

[5] Center for Responsible Lending, "Big Bank Payday Loans," CRL Research Brief, July 2011, *available* at http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf. This APR is based on a fee of $10 per $100 borrowed, which most banks making payday loans charge. One bank charges $7.50 per $100 borrowed.

[6] *Id.*

[7] OCC Advisory Letter, AL 2000-10, Payday Lending, http://www.occ.gov/static/news-issuances/memos-advisory-letters/2000/advisory-letter-2000-10.pdf; FDIC Financial Institution Letters, Guidelines for Payday Lending, FIL 14-2005, February 2005.

[8] "Big Bank Payday Loans." Borrowers remain in this cycle of debt despite "protections" banks have in place like "installment options" and "cooling-off periods," which, as with storefront payday lending, simply do not stop the cycle of repeat loans.

[9] When the CEO of one payday loan company was asked about banks' appetite for involvement in payday loans, he responded that he viewed the OCC's guidance "very positively" and that "once . . . it was issued, we began [the] process of talking to additional financial institutions about the ability to get involved and assist them in a micro line of credit product whether it be laid over a card or DDA [direct deposit advance] account." Daniel Feehan, President, Chief Executive Officer and Director of Cash America – the company that distributed cards carrying MetaBank's iAdvance payday loan product before the OTS shut that product down – speaking on the company's second quarter 2010 investor call, July 20, 2011.

Further, Fiserv, Inc., a provider of software systems to the financial industry, has developed a bank payday software product it calls "Relationship Advance." Fiserv is reporting significant interest in this product: "The pipeline is extremely strong. We've had some very nice mid-tier signings over the last three, four months and we see this as an interesting driver of ... high-quality recurring revenue . . . ." Fiserv Investor Conference, Oct. 11, 2011.

[10] FDIC Financial Institution Letters, Guidelines for Payday Lending, FIL 14-2005, February 2005.

[11] See, e.g., 2001 guidance addressing subprime lending and the 2004 guidance addressing unfair and deceptive acts or practices by state-chartered banks. SR 01-4, Letter from Board of Governors to Supervisees and attached Interagency Extended Guidance for Subprime Lending Programs, January 31, 2001.

[12] Research has long shown that payday loans cause serious financial harm, including loss of basic banking privileges because of repeated overdrafts, increased likelihood of bankruptcy, paying credit card debts and other bills late, and delayed medical care. *See* the following studies for discussions of these negative consequences of payday lending: (1) Paige Marta Skiba and Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* Vanderbilt University and the University of Pennsylvania (October 10, 2008), *available at* www.law.vanderbilt.edu/faculty/faculty-personal-sites/paige-skiba/publication/download.aspx?id=2221; (2) Sumit Agarwal, Paige Skiba, and Jeremy Tobacman. *Payday Loans and Credit Cards: New Liquidity and Credit Scoring Puzzles?* Federal Reserve of Chicago, Vanderbilt University, and the University of Pennsylvania (January 13, 2009), *available at* http://bpp.wharton.upenn.edu/tobacman/papers/pdlcc.pdf; (3) Dennis Campbell, Asis Martinez Jerez, and Peter Tufano (Harvard Business School). *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures*, Harvard Business School (June 6, 2008), *available at* www.bos.frb.org/economic/eprg/conferences/payments2008/campbell_jerez_tufano.pdf; and (4) Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, University of Chicago Business School (November 15, 2007), *available at* http://home.uchicago.edu/%7Ebmelzer/RealCosts_Melzer.pdf; (5) Bart J. Wilson, David W. Findlay, James W. Meehan, Jr., Charissa P. Wellford, and Karl Schurter, "An Experimental Analysis of the Demand for Payday Loans" (April 1, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083796.